

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.35537 of 2002

Vinayagar Murali .. Petitioner

-Vs-

1. State of Tamil Nadu
rep. by the Secretary
Government of Tamil Nadu
Fort St. George
Chennai.

2. The Commissioner of Police
Chennai City
Egmore
Chennai. .. Respondents

Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.K.Chandru
Senior Advocate
for Mr.R.Sunil Kumar

For respondents : Mr.N.R.Chandran
Advocate General, assisted by
Mr.D.Krishna Kumar
Special Govt. Pleader
:ORDER

Secularism, to which we have pledged ourselves under the Constitution, is not an exaltation of irreligion. Secularism, therefore, is a basic feature of our constitution. Secularism, in Indian Constitution, does not mean an anti-God or aesthetic society, but it means equal status of all religion, without any preference in favour of or discrimination against any one of them, as held in Bommai case reported in AIR 1994 SC 1918.

2. The Constitution, however, does not define the word "religion", even though Articles 25 to 28 deal with religion. These articles embody the principles of religious tolerance. All persons are entitled to freely practice their own faith and religious practice. Hence, the Constitution emphasizes the secular nature of Indian democracy.

3.1. The petitioner is the convenor of the Tamil Nadu State Vinayakar Chathurthi Central Committee consisting of the following organizations:

- (a) Hindu Makkal Katchi;
- (b) Hanuman Sena;
- (c) Shiva Sena;
- (d) Shiva Sena Workers Union;
- (e) Vinayaka Chathurthi Vizha Kuzhu, Pallavaram and Chengai District;
- (f) Vinayaka Chathurthi Committee, Chengai District;
- (g) Hindu Munnani.

3.2. Having installed temporary idols at various places in the city and celebrated Vinayakar Chathurthi on 10.9.2002, the petitioners have organized for Anna Dharma to poor people, Ganapathi Homam, Gomatha Pooja and Gaja Pooja, Bhajans and proposes to take a procession on 15.9.2002 at 11.30 am, through the thoroughfare to reach the sea at Marina Beach to immerse the idols of Lord Vinayaka in the sea near the place permitted to them in the northern side of the Seerani Arangam at Marina Beach. Hence, the petitioner applied for permission for taking procession on 15.9.2002, mentioning their routes.

3.3. But one Mr. Ramagopalan representing "Hindu Munnani" had already applied on 26.8.2002 to take a similar procession on 15.9.2002. The Commissioner, exercising his powers conferred under Section 41 of the Madras City Police Act, granted permission to the said Ramagopalan to take procession on 15.9.2002 between 1.30 pm and 8.00 pm to reach the sea on the southern side of the Seerani Arangam where they were permitted to install the idol of Lord Vinayaka. Consequently, by proceedings dated 11.9.2002, which is impugned in the above writ petition, the second respondent refused to permit the petitioner to take procession from 1.30 pm on 15.9.2002. However, the petitioner was permitted to perform the poojas and anna dhanas and take the public procession as proposed, at 10.45 am on 14.9.2002, to reach the northern side of Seerani Arangam, where they were permitted to install the idol of Lord Vinayaka by proceedings dated 2.9.2002, prescribing the definite routes and conditions relating to the number of vehicles viz., lorries, tractors and bullock carts, to be used in the procession.

3.4. Admittedly, the petitioner is not challenging any of the conditions imposed in the proceeding dated 11.9.2002, but is only aggrieved by the refusal of permission to take the public procession on 15.9.2002, as proposed, contending that they have already made elaborate preparations to conduct the poojas and annadanas and engaged vehicles to take procession on 15.9.2002. Hence, the petitioner seeks the issue of a writ of Certiorari Mandamus, calling for the records of the second respondent's proceedings bearing reference No.808/Tha Pi 2/20 02 dated 11.9.2002, to quash the same and to consequently direct the respondents to permit the petitioner to take out the procession on 15 th September 2002 as sought for in the application.

4.1. Mr. K. Chandru, learned senior counsel appearing on behalf of the petitioner, submits that the petitioner made a representation on 26.8.2002 itself for installing the idol of Lord Vinayaka in the Marina Beach, and on consideration of the same, the Commissioner of Police, viz., the second respondent herein, by proceedings dated 2.9.2002, permitted the petitioner to

install the idol of Lord Vinayaka on the northern side of Seerani Arangam, and permitted Mr.Ramagopalan to install the idol of Lord Vinayaka on the southern side of the Seerani Arangam; and accordingly, the petitioner had installed the idol of Lord Vinayaka at the place provided therefor.

4.2. Mr.K.Chandru, learned senior counsel, further contends that since the procession organised by the petitioner has to reach the place where they have installed the idol of Lord Vinayaka, as permitted by the Commissioner of Police by the proceedings dated 2.9.2002, the Commissioner of Police cannot totally deny the permission to the petitioner to take procession on 15.9.2002 under the guise of regulatory powers conferred under Section 41 of the Madras City Police Act, and that the permission given by the second respondent to the petitioner to take up the public procession from 10.45. am on 14.9.2002 amounts to a total denial of permission to take the procession on 15.9.2002, which is not permissible in law.

4.3. According to Mr.K.Chandru, learned senior counsel, the Commissioner can only regulate the routes for the procession to be taken by the petitioner on 15.9.2002, which can also be totally different from the route prescribed for the procession led by Mr.Ramagopalan.

4.4. Mr.K.Chandru, learned senior counsel, alternatively seeks permission to perform Ganapathy Homam, Gaja Pooja, annadanam, poor feeding etc. and to take procession from 10.30 am to 1.30 pm on 15.9.2002.

5.1. Mr.N.R.Chandran, learned Advocate General appearing on behalf of the respondents, contends that it is a bounden obligation on the part of the second respondent to maintain the law and order, public order, to protect the interest of the public and also to control the traffic, while granting permission for processions in public places by exercising such regulatory powers conferred under Section 41 of the Madras City Police Act, and therefore, the second respondent should be given a free hand to give specific time, date and the routes to the persons, who seek permission to take processions in public places. Since "Hindu Munnani" headed by Mr.Ramagopalan had already applied as early as on 26.8.2002, for permission to take a procession on 15.9.200 2, much earlier than the petitioner who applied for permission on 5.9 .2002 to take a similar procession on the same day, viz., 15.9.2002, the Commissioner of Police, second respondent herein, rightly exercising his discretion and taking note of the other materials in that regard, granted permission to "Hindu Munnani" headed by Mr.Ramagopalan to take procession between 1.30 pm to 8.00 pm on 15.9.2002, and granted permission to the petitioner to take procession between 10.45 am and 1.00 pm. on 14.9.2002 and consequently, refused to permit the petitioner to take procession on 15.9.2002.

5.2. Mr.N.R.Chandran, learned Advocate General, also contends that the organizations led by the petitioner and the organization led by Mr.Ramagopalan cannot be given permission at the same time, unless they give a joint representation to take up their procession on 15.9.2002 jointly, agreeing for the conditions that may be imposed by the second respondent.

5.3. The learned Advocate General further explains that the alternative suggestion of Mr.K.Chandru, learned senior counsel, to permit the petitioner to conduct annadanams and poojas and to take procession between 10.30 am and 1.00 pm on 15.9.2002 could not be considered, as the second respondent have to regulate the traffic to facilitate the leaders and members of all political parties, as well as the general public, to reach Anna Square at Marina Beach on between 10.30 am. and 1.00 pm. to pay their respect to their departed leader and former Chief Minister of Tamil Nadu Dr.C.N.Annadurai, whose birthday falls on 1 5th September.

6. I have given a careful consideration to the submissions of both sides.

7. Religion is the rule of life. The religion is a matter of faith, belief and doctrine, but is not necessarily theistic, and there are well known religions in India like Buddhism and Jainism, which do not believe in God, and therefore, a religion is incapable of precise judicial definition, nor there is any formula of general application nor any knife-edge test. It concerns the conscience or spirit of man.

8. The word 'conscience' means "a knowledge of sense of right or wrong, a moral judgment that opposes the violation of previously recognized ethical principles and that leads to feelings of guilt if one violates such principles" (vide Websters New World Dictionary). Therefore, freedom of conscience has thus no necessary connection with any particular religion or any faith in God, for instance, Buddhism and Jainism.

9. The right to freedom of religion conferred under Article 25, 26 and 27 of the Constitution of India, that all persons are entitled to freely practice their own religion and religious practice, is not an absolute right. It is subject to restrictions on the ground of public order, morality and health; other provisions of the Constitution; regulation of non-religious activity associated with religious practice; social welfare and social reforms, meant to eradicate practices or dogmas which stand in the way of the country's progress as a whole, but do not form the essence of religion. It is therefore the Constitution re-emphasizes for a secular status to accord equal treatment to all religions, religious and religious sects and denominations, and such essential ingredients must be taken as a conclusive basic feature of our Constitution. Even a minor derogation from the above constitutional mandate cannot be compromised at any cost.

10. No doubt, while exercising such right to freedom of religion conferred under Articles 25, 26 and 27 of the Constitution of India, in forms of private and public worships, which is not only meant to the citizens of India but is also extended to all persons, including the aliens, to whichever religion he belongs to, much less a minority religion, or otherwise, such right to practice one's religion would follow the right to take out a religions procession; and the same is subject to restrictions imposed in the interest of preventing breach of peace or obstruction of thoroughfare, as held by the Privy Council in MANZUR V. ZAMAN in AIR 1925 Privy Council 36. The right to religious procession prior to the Constitution had to be derived from a custom

or from the right of each individual to use the highway as a passage; but the same has been introduced as a guaranteed right to religious practice conferred under Article 25(1) as held by the Apex Court in GULAM V. STATE OF U.P. AIR 1981 SC 2198, which is concedingly subject to the restrictions, referred to above.

11. It cannot be disputed that the leaders and members of all political parties of the State as well as the general public should have their access to reach Anna Square at Marina Beach on 15.9.2002 to pay their respect to a dazzling personality, a dynamic social worker, a renowned social reformer, an unique satirist, an eminent statesman, a great orator and former Chief Minister of this State, all in one, Dr.C.N.Annadurai, popularly known as "Arignar Anna". Therefore, the decision of the second respondent to regulate the traffic to facilitate access to the leaders and members of all the political parties to reach Anna Square at Marina Beach between 10.00 am and 1.00 pm. on 15.9.2002 is, in my considered opinion, fully justified.

12. The second respondent, who is undoubtedly empowered to regulate the procession, whether religious or political, as the case may be, is entitled to exercise his discretion, taking note of all materials available before him, not only to prescribe the definite routes of the procession, but also provide definite time and place for such poojas and processions, particularly when there are more one organization under different leaderships who propose to perform separate poojas and take separate processions, even though their ideology is common, as they have not made any joint application to conduct poojas and processions, jointly. The organization led by Ramagopalan, had since applied earlier i.e., on 26.8.2002, the request of the said organizations was permitted and permission was accorded to them to conduct the poojas and annadanams and to take the procession between 1.30 pm and 8.00 pm on 15.9.2002.

13. In order to provide an alternative time and date for conducting the poojas and to take separate processions, the petitioner, by impugned proceedings dated 11.9.2002, was rightly permitted to perform such poojas and take procession between 10.45 am and 1.30 pm on 14.9.2002 . The decision of the second respondent taken in the impugned proceedings dated 11.9.2002 by exercising the powers conferred under Section 41 of the Madras City Police Act, cannot be stated as an adjudicial order or a quasi-judicial order, but it is an executive order, intended for the purpose of maintaining public order, peace and tranquility, as held by a Division Bench of this court by order dated 1.10.1996 in W.A.No.881 of 1996. The second respondent, having taken such appropriate decision in the matter, on the basis of the information and materials available before him, imposing necessary restrictions, not only regulating the routes for the procession as well as for the traffic for the public, but also in prescribing the dates and time, taking into consideration, the public order, peace and tranquility, which are to be maintained by the second respondent statutorily, such powers exercised by the second respondent under Section 41 of the Madras City Police Act, cannot therefore be complained as discriminatory or mala fide, nor could be interfered by this Court, as otherwise the maintenance of the law and order, much less public order, peace and tranquility, could not be secured.

14. Under the above facts and circumstances of the case, finding no reason to interfere with the order dated 11.9.2002, I am obliged to direct the second respondent to consider the joint representation of the petitioner as well as Mr.Ramagopalan, if made, seeking permission to conduct the poojas and annadanams, and to take procession of Lord Vinayaka between 1.30 pm and 8.00 pm on 15.9.2002 jointly and pass appropriate orders as deemed fit and necessary imposing such conditions or restrictions that are required in the interest of maintaining law and order, public order, peace and tranquility. Alternatively, the second respondent is also at liberty to convene a peace meeting among the leaders of all the organizations, both led by the petitioner and Mr.Ramagopalan and to take suitable decision in the matter to permit them to conduct poojas, annadanams and to take processions jointly on 15.9.2002, imposing such other conditions or restrictions that are required in the interest of maintaining law and order, public order, peace and tranquility, and to notify the same to the petitioner and all the concerned organizations. In either way, this Court reposes confidence that the second respondent shall take all effective measures to maintain law and order, public order, peace and tranquility.

The writ petition is dismissed with the above direction. No costs.
Consequently, W.P.M.P.No.53021 of 2001 is closed.

Index: Yes
Internet: Yes

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P.D.DINAKARAN,J.
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